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# NON-TERRITORIAL AUTONOMY IN RUSSIA: PRACTICAL IMPLICATIONS OF THEORETICAL APPROACHES

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## ABSTRACT

*Despite the theoretical possibility to use non-territorial autonomy as a mechanism through which ethnic groups can fulfil their right to self-determination along with other minority rights, not many states have been willing to put theory into practice. The article offers an explanation why wider applicability of NTA is problematic by arguing that the theory itself is not yet polished enough to be implemented. The study includes examination of both theoretical approaches and empirical data from a case study of an attempt to establish NTAs in the Russian Federation. The findings suggest that inconsistencies and unclarity in the theory do correlate with practical flaws of NTAs, which allows to suggest that when the theory is tested empirically, the reality reveals all the flaws of the theory. The results indicate that the concept of NTA needs further refinement and development to make it more practice-oriented and applicable. As the problem of minority rights is still to be dealt with, we also propose a model of global union of NTAs where each ethnic group is represented by a non-governmental organisation, which seems to be more applicable than the others, alongside a number of other mechanisms that are even more essential and universal and focus on defending basic human rights.*

## KEYWORDS

- *non-territorial autonomy*
- *cultural autonomy*
- *minority rights*
- *human rights*

## 1. Introduction

Since the second World War, the global peace has been broken by violent ethnic conflicts more than a hundred times, millions of people were killed either in deadly clashes or in episodes of genocide;<sup>1</sup> even more were left alive, but destitute. With almost three hundred ethnic groups being tracked by the Minorities At Risk Project now, prevention of ethnic conflicts remains one of the missions crucial to preserving peace on the planet. As the awareness of the role that ethnicity plays in the relationships between peoples grew, so did the number of ideas how to harness the ethnic component to peaceful purposes. However, a reasonable attempt to legitimise the rights of peoples, like the right to self-determination, in order to secure them from violations had the opposite effect to that of reducing the number of ethnic conflicts.

In the world, there are a few thousands of ethnic groups and only around two hundred states. If all ethnic groups inspired by their right to self-determination raised demands for a state of their own, massive territory redistribution to divide hundreds of states into thousands would have disastrous consequences. Unfortunately, the collision between the right to self-determination and territorial integrity created an inexhaustible source of conflict<sup>2</sup>. Since that moment, both scholars and practitioners have been struggling to close that Pandora's box.

Because the content of the right to self-determination is vague, the right itself is often abused to justify unlawful separatist actions. Despite numerous works studying the origins and the evolution of the right to self-determination in order to determine what it really means and whether it implies the right to secede,<sup>3</sup> the definition is still not agreed upon and the loophole for abuses is still there. Nevertheless, as in some cases during negotiations, state authorities and ethnic minorities tried to find a metaphorical common ground without sowing the seeds of discord on their actual common ground, it turned out that there is a way to level off the two equally important principles, the principle of self-determination and the principle of territorial integrity, through autonomy arrangements.

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<sup>1</sup> See B Harff, 'Assessing risks of genocide and politicide' in TR Gurr & MG Marshall (eds.), *Peace and Conflict 2005. A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy*, University of Maryland, CIDCM, College Park, MD, 2005, pp. 57-61 and TR Gurr, 'Minorities, nationalists and islamists: managing communal conflict in the twenty-first century' in CA Crocker, FO Hampson & P Aal (eds.), *Leashing the Dogs of War: Conflict Management in a Divided World*, United States Institute of Peace, Washington, 2007, pp. 131-161.

<sup>2</sup> HE Chehabi, 'Self-determination, territorial integrity and the Falkland islands', *Political Science Quarterly*, vol. 100, no. 2, 1985, pp. 215-225 and H Hannum, 'The right to autonomy: chimera or solution?' in K Rupesinghe & VA Tishkov (eds), *Ethnicity and power in the contemporary world*, United Nations University Press, Tokyo, 1996, retrieved 6 May 2012, <<http://archive.unu.edu/unupress/unupbooks/uu12ee/uu12ee0s.htm>>

<sup>3</sup> The examples of such works are amongst others M Pomeranc, *Self-determination in law and practice: the new doctrine in the United Nations*, Martinus Nijhoff Publishers, the Hague, 1982; H Hannum, *Autonomy, Sovereignty an Self-Determination: the Accommodation of Conflicting Rights*, rev. edn, The University of Pennsylvania Press, Philadelphia, 1996; D Rai, *Statehood and the Law of Self-Determination*, Kluwer Law International, the Hague, 2002.

The existence of the right to self-determination implies the existence of a mechanism through which the right is to be fulfilled, and autonomy could potentially become such a mechanism.<sup>4</sup> Autonomy is all the more valued for its flexibility, not only in terms of the degree of power-sharing (the state can decide what degree of power-sharing is appropriate in each particular situation), but also when it comes to the range of matters (i.e. culture, education etc.), over which to grant a share in power.<sup>5</sup> What increases the applicability of autonomy is that it does not require to have a territorial component at all; in other words, autonomy can be non-territorial and thus it can be granted to geographically dispersed or small ethnic groups.

Moreover, while sovereign states are usually prejudiced against granting territorial autonomy, fearing it could be merely the first step towards secession, they have no such prejudice against non-territorial autonomy, which means that non-territorial autonomy could stand even a better chance than territorial autonomy to become the mechanism through which the right to self-determination is to be fulfilled.<sup>6</sup> However, despite the growing acceptance of autonomy as a state-embedded mechanism of conflict prevention and a tool helping the minorities to defend their rights combined with numerous theoretical works on the concept of non-territorial autonomy (from here on abbreviated to NTA), not many states have been willing to put theory into practice.

This article will try to determine why a wider application of NTA is problematic by revealing the inconsistencies in the theory of NTA that hamper its implementation. The emphasis is to be made on theoretical inconsistencies that do have effect on implementations of the theory. To ensure that slight imperfections in the theory will not be mistaken for drawbacks and flaws that do reflect on practical implications, and that practical complications caused by misconception of the theory rather by the theory itself also will not count, the article will provide examination of both theoretical approaches and empirical data from a case-study of the attempt to establish NTAs in Russia. The Russian Federation was selected due to multinational culture of its population, previous experiences in nation-building and because the process of establishing NTAs had started in Russia relatively recently, which allows us to suppose that the authorities were familiar with the revisions the concept of NTA had undergone and took them into account while devising legal bases for NTAs.

The article will employ a theoretical perspective within the framework of multiculturalism, an ethical-philosophical consideration of cultural diversity where,

<sup>4</sup> J Wright, 'Minority groups, autonomy and self-determination', *Oxford Journal of Legal Studies*, vol. 19, no. 4, 1999, p. 606.

<sup>5</sup> For more discussion of the flexibility of autonomy see R Lapidoth, *Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, Washinton, DC, 1996.

<sup>6</sup> Potentially conflict-provoking properties of territorial autonomy are discussed in H Hannum, 'Territorial autonomy: permanent solution or step towards secession', in A Wimmer et al (eds.), *Facing Ethnic Conflicts: toward a new realism*, Rowman & Littlefield, Lanham, MD, 2004, pp. 274-283 and SE Cornell, 'Autonomy as a Source of Conflict: Caucasian Conflicts in Theoretical Perspective', *World Politics*, vol. 54, no. 2, 2002, p. 246.

like human dignity in contemporary liberalism, group dignity is valued and should be protected for providing cultural groups with rights. The article is organised as follows: section 2 introduces the reader to the article's goals; in sections 3-5 we analyse a certain aspect of the practice of NTAs in Russia and link its peculiarities to theoretical implications of some of the key concepts of the multiculturalist framework; section 6 concludes.

## 2. Bridging the gap between theory and practice

To avoid any misunderstanding, we would like to begin with clarifying two terms that will often feature in the article: non-territorial autonomy (NTA) and National-Cultural Autonomy (NCA). Generally, political scientists distinguish different types of non-territorial autonomies. Heintze, for example, identifies and describes three kinds of NTAs: cultural, personal, and functional autonomy.<sup>7</sup> Cultural autonomy, as the definition suggests, is limited to cultural affairs, such as language, education and so on. Over these issues, ethnic groups which have been granted cultural autonomy, can freely decide what is best for them. Personal autonomy is autonomy granted to a group as a legal person irrespective of the territorial principle. Cultural autonomy, in this respect, is a personal autonomy limited to cultural affairs. Functional autonomy implies that the minority, as a legal body, should be organised in a private form.<sup>8</sup> As all the three types overlap and intertwine, which makes it difficult to distinguish between the terms that denote them, in this article the preference is given to the broader term of non-territorial autonomy for its clarity and precision, the major feature of the described types of autonomy being their non-territorial character. As for the term National-Cultural Autonomy (NCA), it is used to refer to non-territorial autonomies in the Russian Federation, where National-Cultural Autonomy has been adopted as a legal term.

In Russia the concept of National-Cultural Autonomy was introduced by the Federal Law on National-Cultural Autonomy in 1996. It is stated in the text of that law that the National-Cultural Autonomy in the Russian Federation was established with the purpose of defending national interests of citizens of the Russian Federation in the process of choice of the ways and forms of their national-cultural development, which supports the aforementioned idea that NTA is often seen as a tool designed to help minorities to defend their rights. The document states further that the national-cultural autonomy in the Russian Federation... is the form of national-cultural self-determination<sup>9</sup>. This phrase shows again that the NCA in Russia, at least in the way proposed by the law, is an exemplification of what a non-territorial autonomy should represent, as it corresponds with the classical description of an NTA provided by numerous political scientists (see Nimni, 2005;

<sup>7</sup> H Heintze, 'On the Legal Understanding of Autonomy', in M. Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International, the Hague, 1998, pp. 7-33.

<sup>8</sup> Heintze, pp. 20-24.

<sup>9</sup> See Federal law N 74-ФЗ 'O natsionalno-kulturnoy avtonomii' [On National-Cultural Autonomy], 17 June 1996,

Roach, 2005 and others).<sup>10</sup> It is not surprising that the NCA in Russia, being the embodiment of the theory of a non-territorial autonomy, consequently has the same flaws as the theory itself, with that non-insignificant distinction that all these flaws are not purely hypothetical but real.

Political theorists often lack the opportunity of employing in their studies a whole number of research methods available to scientists from other fields of research, such as the method of experiment. However, political scientists do not confine themselves to explaining things that have already happened, the course of events they were not in control of; for this is a job for historians. What we are trying to do is to establish the link between cause and effect, find the regularities behind the Hand of Nature, and, based on these findings, to predict with the highest degree of accuracy possible what will happen as a reaction to a certain action or event; whether these developments will be for better or for worse, how we could prevent them from taking place if they would be for worse and how we could foster them if they are for better. The problem is that the degree of abstraction political theorists dive into in search of the best political concepts disconnects the theories they propose from reality to such an extent that practical application of such theories becomes almost impossible. Thus in Plato's later political works, after his fruitless efforts to turn Syracuse into his Ideal State, his views on the very feasibility of such a state appear modified. It certainly does not mean that hypotheses and suppositions are of no practical value in the field of political science, but it does teach us to appreciate the chance theorists do not often have, which is to check how the theory works when put into practice.

Thanks to political practitioners in Russia, who have taken up the challenge and decided to marry the theory of NTA to practice, scientists are now able to observe the result of this marriage and advance further in their studies. Hopefully, a closer examination of the situation with NTAs in the Russian Federation will contribute to scientific research, providing the empirical data needed to verify the theory and make the necessary corrections – in other words, to update it, taking into account all drawbacks revealed by the reality. Working out a list of guidelines for practitioners willing to establish an NTA system in their countries would help them to avoid the mistakes their predecessors had to face, to learn from their mistakes. Thus, one of the aims of both descriptive and explanatory case study is to make the practice in a manner serve the theory so that the theory may serve the practice in future. To account for the choice of the country for a case study and to explain why the critical approach was applied we would like to highlight our sincere belief that exposing defects in theoretical works and their realisations may oblige others to suggest remedies.

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<sup>10</sup> E Nimni, 'The National Cultural Autonomy model revisited' in E. Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics*, Routledge, New York, 2005, pp. 1-15; SC Roach, *Cultural Autonomy, Minority Rights, and Globalization*, Ashgate, Burlington, VT, 2005, pp. 1-57.

### 3 National-Cultural Autonomy: the form

3.1. *The legal basis of NCA.* The fact that the Federal Law on National-Cultural Autonomy was issued not immediately after the dissolution of the Soviet Union shows that the Russian authorities had been searching for the best way to address ethnicity issues and organise governance over a multi-ethnic society with great care, for exactly the same reason why there should be closer cooperation between theorists and practitioners – so as not to make the same mistakes twice. In the Soviet Union, indiscretion in ethnic policy and nation-building had led to what the former president of Russia Vladimir Putin termed as the greatest geopolitical catastrophe of the century.<sup>11</sup> The approach of the Russian authorities to the multicultural society of the country was careful, but not unproblematic.

Curiously enough, the right to a national-cultural autonomy was granted already in 1992 by the Fundamentals of Legislation on Culture of the Russian Federation, but, since it was not specified what form these national-cultural autonomies should take (though it did say that citizens had the right to found associations, creative unions, guilds and other cultural organisations) and no legal basis for the very existence of national-cultural autonomies was provided, ethnic groups could not exercise this right.<sup>12</sup>

In 1996, ethnic minorities did get an actual legal-based opportunity to exercise their right to a national-cultural autonomy, for the Federal Law on National-Cultural Autonomy gave a more narrow definition of NCAs: public associations with voluntary membership. Unfortunately, things were not made clear by this document, partly because another document, The concept of state national policy of the Russian Federation, issued two days earlier, again gave a broader definition characterising national-cultural autonomies as associations and other alliances acting in accordance with current legislation. Since all three laws mentioning NCAs are all at once in force, NCAs in Russia can exist as simple associations, public associations, creative unions, guilds, other cultural organisations and, if it is not enough, other alliances. However, no matter what one calls an NCA, it will have to operate according to the Federal Law on Public Associations adopted in 1995. Further regulations brought about a kind of redundancy, failing, nevertheless, to bring along anything new.<sup>13</sup>

<sup>11</sup> 'Putin deplores collapse of the USSR', *BBC News*, 25 April 2005, retrieved 11 May 2012, <<http://news.bbc.co.uk/2/hi/4480745.stm> >

<sup>12</sup> *Osnovy zakonodatelstva Rossiysoy Federatsii o kul'ture* [Fundamentals of Legislation on Culture of the Russian Federation], 9 October 1992, N 3612-1.

<sup>13</sup> A lot of other flaws in the legislation concerning national-cultural autonomies are pointed out by Osipov in A Osipov, 'Natsionalno-kulturnaya avtonomiya v Rosii: ideya i realizatsiya' [National-Cultural Autonomy in Russia: the idea and realization] in N. Bagdasarova (ed.), *Etnokulturnoe mnogoobrazie -- potentsial razvitiya obshestva v stranakh Centralnoy Azii (praktika, kontseptsii, modeli, perspektivy)* [Ethnocultural diversity – the potential for society development in the Central Asian countries (practice, constructs, models, prospects)], Bishkek, 2004, pp. 151-184. There is no need to mention them all and repeat what has already been written; especially since some of them are purely the result of the legislators' oversight, of certain importance to legal scholars, but not too important for political theorists.



3.2. *Minorities as entities.* The fact that Russian legislators have been having difficulties formulating the form NCAs are to take can be related to two distinct theoretical problems within multiculturalist discourse: the problem of *group membership* and the problem of *group rights*, both of which are in turn related to a broader question of minorities as legal or political entities.

To be able to exercise their rights, minorities have to take some kind of a legal form. Non-territorial autonomy as a legal entity is not exactly an institutionalised version of an ethnic community, since ethnic communities are much more amorphous in their essence than any legal entity could afford to be; there is no well-defined structure and fixed membership.

Ethnicity or nationality are harder to establish than citizenship, there are no clear rules how to determine what nationality a person has and often no documents to prove it. It is also not so clear how to treat people with multi-ethnic identity. Should someone whose parents are each from a different nationality be represented by a non-territorial autonomy of his mother's or his father's nationality? Establishing a person's ethnicity, just to trace their descent is simply not enough and sometimes even impossible; we have to rely mostly on the persons own view on his identity; i.e. what ethnicity one identifies oneself with. But being of a certain ethnic background is not the same as being a Conservative or a Liberal, it implies not only a social or cultural but also a biological connection with a certain ethnic group. In this connection, we would like to bring to mind that Karl Renner, one of the founding theorists of NCA, believed that national groups are not legal entities.<sup>14</sup>

We do recognise this as an obstacle, in contrast to Jovanovic, who argued that legally, the fact that minorities lack homogeneity does not really matter, since not all the groupings are entitled to be moral and legal rights bearers anyway; individual people should exercise only individual rights, while legal bodies, as long as they are founded on democratic principles such as voluntariness, accountability etc., can act as bearers of collective rights and thus represent minorities.<sup>15</sup> We have to repeat again that this way, despite all the democratic procedures going on within legal bodies, they are more likely to end up representing themselves rather than any ethnic minorities, because most of the people belonging to minorities are left behind. Reducing an ethnic community to a non-governmental organisation is not a legitimate substitution; one cannot deprive hundreds of people of their rights just because they are not members of a certain organisation.

What Renner proposed in his model to avoid this problem was that all citizens should declare their nationality when they reach voting age, so that they automatically belong to a certain community. As we have already discussed above, it is not really an option because people tend to declare their nationality according to their own

<sup>14</sup> K Renner, [Synopticus], *Staat und Nation* [State and Nation], Eigenverlag, Wien, 1899.

<sup>15</sup> M Jovanovic, 'Recognising minority identities through collective rights', *Human Rights Quarterly*, vol. 27, no. 2, 2005, pp. 625-651.

views, although nationality is not exactly a matter of opinion. To make our point clear, we would like to draw the readers attention to the following information: according to Federal State Statistics Service, the population census conducted in 2002 showed that some Russian citizens regard themselves as goblins, gnomes, elves, hobbits, Inka and Scythians and, of course, Jedi.<sup>16</sup> It is worth mentioning that with 70,000 members of the Jedi order in Australia registered by Australian Bureau of Statistics and an impressive 390,000 Jedi registered in England and Wales by the Office for National Statistics, the Jedi phenomenon is not endemic to Russia<sup>17</sup>.

Even if the membership is to be on a voluntary basis, there are additional implications of ensuring representativity of such an arrangement. The fact is that it is not yet fully clear whether a certain non-governmental organisation with voluntary membership has the right to represent not only its members, but a whole ethnic group. To prove its legitimacy is a difficult task not only for non-territorial autonomies, but for all NGOs, particularly for those who deal with human rights defence.<sup>18</sup> Different criteria for evaluating representative legitimacy have been proposed by political scientists. Following Vedder, we decided to make use of the three criteria derived from Beetham's theory of the legitimacy of state governments: legal (conformity to rules), moral (shared beliefs) and sociological one (expressed consent)<sup>19</sup>. If we try and apply these criteria to test the legitimacy of NCAs in the Russian Federation, then it turns out the third criterion does cause a problem. If an NCA in the Russian Federation operates in accordance with the law, then it is perfectly legal. If it shares not only universal values, but also cultural beliefs and values of the ethnic community it seeks to represent and observes its traditions, then it is able to pass the morality test too. Nevertheless, when it comes to the actual legitimacy of representation, it becomes clear that an organisation's right to act on behalf of an ethnic group can be questioned.

In our opinion, the most important condition any NGO should meet in order to be legitimate, is to be unconditionally supported by the group it represents; to be more precise, the group itself is the source of legitimacy as it entitles the organisation to act in the groups interest. Unfortunately, there is no clear procedure through which ethnic communities could show this support. When it comes to

<sup>16</sup> The results of the Russian Census (2002) are to be found on the official homepage of the census: <<http://www.perepis2002.ru/index.html?pid=11>>

<sup>17</sup> See Australian Census 2001, last updated 12 May 2012, retrived 12 May 2012, <<http://www.censusdata.abs.gov.au>>; British Census 2001, retrived May 2012, <<http://www.ons.gov.uk/ons/guide-method/census/census-2001/index.html>>.

<sup>18</sup> On the legitimacy of non-governmental organisations see H Slim, 'By What Authority? The Legitimacy and Accountability of Non-governmental Organisations', *The Journal of Humanitarian Assistance*, vol. 10, no. 1, 2002, pp. 1-12.

<sup>19</sup> For Beetham's thery of state governments' legitimacy see D Beetham, *The legitimation of power*, Macmillan, London, 1991; the criteria proposed by Vedder are to be found in A Vedder, 'Internet NGOs: Legitimacy and Accountability', in R. Traummuller (ed.), *Electronic Government*, Springer, Berlin, Heidelberg, New York, 2003, pp. 49-54; alternatively, there is a four-criterion system proposed by Atack, 1999 (representativeness, distinctive values, effectiveness, empowerment), described in I Atack, 'Four Criteria of Development NGO Legitimacy', *World Development*, vol. 27, no. 5, 1999, p. 855-864.



non-territorial autonomies, democratic mechanisms such as direct referendums or election of representatives are not only missing but extremely difficult to make use of even if someone did try to apply them. It is possible to organise elections within the organisation among its members, but this way the organisation will only secure its right to represent its actual members, not the whole community. To organise an election or a referendum which would include all people belonging to a certain ethnic group is not a trivial task, especially when the group is territorially dispersed, as it would require great financial and other resources non-profit organisations do not often possess.

The second problem associated with the need to treat minorities as entities lies with the unclear nature of *group rights*. When discussing how to ensure that ethnic minorities are fixed up with a working mechanism to exercise their rights, we come across the same problem Renner had to face more than a century ago: there is no definite answer to a more basic question whether national minorities rights are individual or collective. If they are individual, there is no particular need for collective bodies such as non-territorial autonomies; although, of course, individuals are free to form associations to articulate their interests and collectively exercise their individual rights; moreover, it promotes the development of civil society, which is in itself a good thing. But if minority rights are collective, then the whole ethnic group is a bearer of these rights, not a single body.

Hannum tries to establish the link between human rights as individual rights, and the rights of national and/or ethnic, religious and linguistic minorities:

The fears of many ethnic groups are based on violations of such fundamental rights as the right to due process, freedom from discrimination, and personal liberty and security. Governments which discriminate against certain groups or which repress linguistic or cultural expression obviously contribute to ethnic conflict and violate "minority rights," although redress for such violations does not depend on the existence of special categories of group rights.<sup>20</sup>

Hannum argues further that creating separate institutions to respond to ethnic concerns is not necessarily compatible with traditional notions of democracy, which promote individualistic as well as majority rule orientation. Autonomies, in Hannum's view, can become a tool for ensuring that people are able to effectively participate in political life. We, in our turn, consider effective participation of minorities in a majority-ruled world desirable, but improbable.

#### 4. Recognising minorities: substance

To be able to recognise the minority status of a certain group, we have to be able to differentiate between those groups that do fall under the definition of minority and those that do not. However, *the very definition of minority is ambiguous,*

<sup>20</sup> Hannum, *The right to autonomy: chimera or solution?*

because it allows both number-based and status-based interpretations.<sup>21</sup> In Russia, such an ambiguity resulted in practical implications.

If we still think of autonomies, both territorial and non-territorial, as a means of representing minorities interests, then the Article 5, Chapter II of the Federal Law on National-Cultural Autonomy contains a contradiction, since the statement that both regional and federal NCAs of the ethnic group that already has a republic, an autonomous region or an autonomous district, i.e. a territorial autonomy, may coordinate its activities with the public authorities (of the republic, region etc.) clearly suggests the possibility of existence of an NCA of an ethnic group which has already been granted territorial autonomy; thereby an ethnic group may represent its interests by means of a territorial and a non-territorial autonomy at the same time. Although under the law both autonomies may coordinate their activities, they may still choose not to do so; thus there will be two bodies with different or even contradictory conceptions representing the same group.

Along with that, there is another inconsistency, because, according to the same law, only those ethnic communities which are finding themselves in the state of minority on a certain territory have the right for an NCA. This provision combined with the one above may prove to be a source of profound perplexity: can an ethnic group be considered a minority on its own territory? In number, yes, it is quite possible. As a matter of fact, in some of the republics in the Russian Federation the so-called titular ethnic groups (after which the republics were named) do not constitute the majority of the population in their republics, but at the same time, they have this special titular status, which makes them the dominant group on the territory of the republic.<sup>22</sup>

What exactly is meant by the minority in the Federal Law on National-Cultural Autonomy, remains unclear, but the reason why the law was amended to include the phrase about state of minority is partly because the legislators did not want the people of Russian origin to use the right to create an NCA.<sup>23</sup> But if they meant numerical minority, then there are groups of Russian people who are in minority in some of the republics and, consequently, have the right for an NCA; if what they

<sup>21</sup> For the definition of minority and its legal implications see D Mihula, 'National Minorities in the Law of the EC/EU', *Romanian Journal of European Affairs*, vol. 8, no. 3, 2008, pp. 51-81 and D Mihula, 'Definition of national minorities in international law', *Journal of US-China Public Administration*, vol. 6, no. 5, 2009, pp. 45-51.

<sup>22</sup> The population share of titular groups in their republics is discussed in V Stepanov, 'Ob etnicheskom statuse i ponyatii 'menschinstvo' v sovremennoy Rossii [On ethnic status and the notion of 'minority' in contemporary Russia]', *Kazanskij Federalist*, no. 1-2 (23-24), 2010, p.154. Relying on the data provided by the 2002 Census, Stepanov lists eleven republics in which numerically the titular groups are in minority. The republic where the titular group's share of the republic population is the lowest in Russia is Karelia. According to the latest Russian Census (conducted in 2010), ethnic Korelians make up only 7.4% of the republic's population. The results of the 2010 census are available at <[http://www.perepis-2010.ru/results\\_of\\_the\\_census/](http://www.perepis-2010.ru/results_of_the_census/)>.

<sup>23</sup> See TM Smirnova, 'Natsionalno-kulturnaya avtonomiya: teoriya, praktika i tendentsii [National-Cultural Autonomy: theory, practice and trends]', *Sotsialnye Problemy*, vol. 1, no. 4, 2008, retrieved 8 May 2012, <[http://www.socprob.ru/index.php?option=com\\_content&view=article&id=84:2012-01-20-15-36-58&catid=38:q-q-2008-4](http://www.socprob.ru/index.php?option=com_content&view=article&id=84:2012-01-20-15-36-58&catid=38:q-q-2008-4)>.

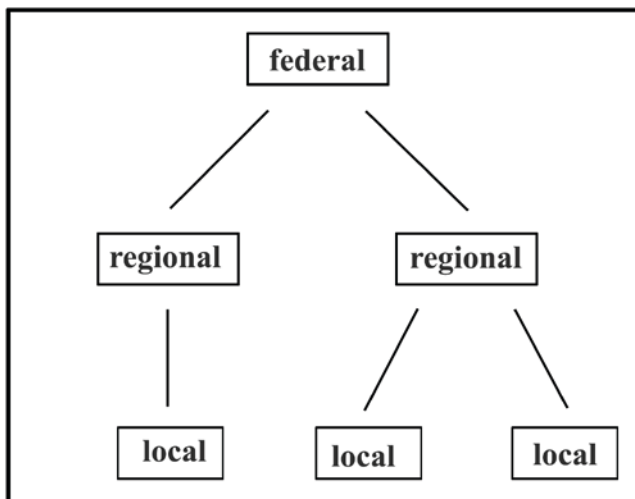
meant was a subordinate minority, then ethnic groups which are considered to be titular nations in their republics should not have the right to register NCAs on the territory of their republics, because they are already the dominant group there. But then again, if Russians are in minority on the territory of a certain republic where they are not the titular ethnic group, can they be the subordinate group on the territory of the republic which is a constituent entity of the Russian Federation where Russians are the titular nation?

Besides, the exact same statement that ethnic groups should be in the state of minority on a certain territory to be able to exercise the right for an NCA runs counter to the generally accepted idea that a non-territorial autonomy as an institution is specifically designed to meet the needs of territorially dispersed groups.

## 5. Representing minorities: structure

*5.1. The situation in Russia.* Soon after the Federal Law on National-Cultural Autonomy set the process of registering new NCAs going, it turned out that under the law there could simultaneously exist an unlimited number of NCAs representing the same ethnic group. The authorities tried to solve this problem by introducing amendments to the law, which brought in a hierarchical principle of local-regional-federal autonomies to the NCAs structure, where local NCAs may found a regional NCA (but not more than one regional NCA in every constituent entity for a certain ethnic group), and regional NCAs may found a federal one. In other words, existence of many local NCAs representing one ethnic group is still possible, whereas there can only be one federal autonomy for each ethnic community (see figure 1).

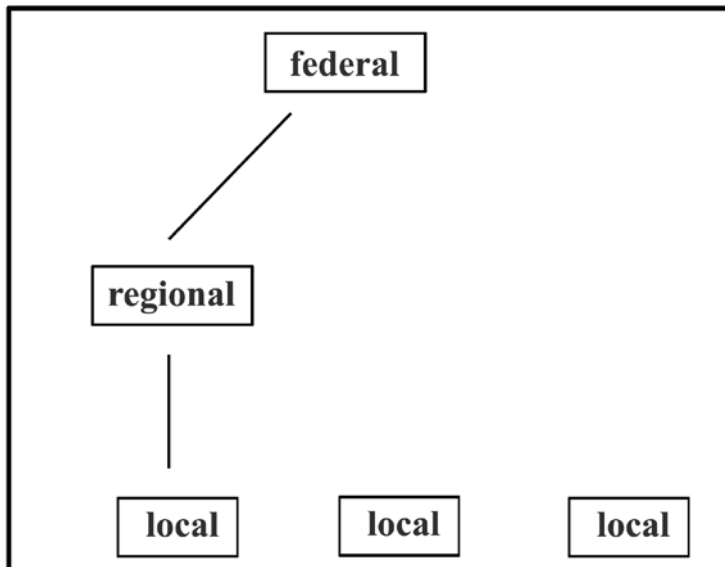
Figure 1. An illustration of a three-level hierarchical structure of NCAs where a federal level NCA is comprised of regional level NCAs which in their turn are comprised of local level NCAs.



It is worth mentioning that Chapter II, Article 5, Part III, containing this provision, had to face a constitutionality test, and although it was proved constitutional, the very fact that its constitutionality was challenged shows how intricate and complicated the created system of ethnic minorities representation remains.<sup>24</sup> For instance, what the Constitutional Court of the Russian Federation has specified on this matter is that although a certain ethnic group may found only one regional NCA per constituent entity, it has every right to found any other organisation with the same range of activities (defending the minority's rights in such areas as language, culture, education, identity preservation etc.), only it will not be called a regional NCA.

Another interesting fact about the hierarchical structure of NCAs is that albeit higher NCAs can be founded only by the majority of lower ones, there is nothing in the law to make clear whether a lower NCA may still found a higher one if there is only one lower NCA registered. So if certain members of ethnic groups act swiftly enough, it seems that they can create a local NCA to turn it to a regional, and then to a federal one. Those NCAs which come after them will not be able to found a regional or, consequently, a federal NCA because of the existence of the first one, even if they represent more people belonging to the ethnic group (see Figure 2).

Figure 2. An illustration of a three-level hierarchical structure of NCAs in a hypothetical situation where a federal level NCA is comprised of only one regional level NCAs which in its turn is comprised of only one local level NCA; thus all the other local NCAs are not represented on either regional or federal level.



<sup>24</sup> Another problem is that the hierarchical system of local, regional and federal NCAs in fact makes them territorially bound, thus undermining the principle of non-territoriality.

5.2. *Is it Russia-specific?* A very significant distinction between the basic concept on NTAs, the concept of NTAs within the consociational theory, and what the Russian authorities are trying to create in Russia lies in the place NTAs take with respect to the government. NTAs as free associations of citizens, i.e. non-governmental organisations, may exist independently of the government as a part of civil society, whereas in consociational democracy, NTAs act as elements of the structure of the government, amounting to federal units of non-territorial federacy. In Russia, national-cultural autonomies are something in between.

From what we have seen, national-cultural autonomies are basically non-governmental organisations, but their hierarchical structure with three levels which are identical to the three levels of governance and the fact that NCAs of each level are supposed to be in close cooperation with the public authorities of the same level suggests either that the Russian authorities are trying to combine territorial federalism with its non-territorial version, both enriching the horizontal dimension of governance by encouraging cooperation between public authorities and their non-governmental partners, and creating a virtual, non-territorially bound copy of the state, or, alternatively, it is a top-down attempt to foster the development of civil society in Russia (if that is the case, then why the emphasis on ethnic groups?).

In either case the something-in-between approach adopted in the Russian Federation is slightly controversial; for example, NCAs are not financially supported by the government, which means they can still act simply as non-governmental organisations and found and consequently fund non-governmental educational institutions to provide education in minority languages; at the same time, local authorities in their turn can for the same purposes and in cooperation with NTAs found state education institutions with public financing. Two possible ways of setting up educational institutions for minorities certainly increase the chances they will eventually be set up, by NCAs in constituents where the economic situation does not allow local authorities to do this, and by local authorities in constituents where more financial means are available. However, considering the general economic situation in Russia, where educational and research institutions are often severely underfinanced, financial support for minority education coming from the government could produce a backlash among the national majority. To recapitulate, NCAs in Russia are supposed to be more state-oriented than non-governmental organisations usually are, but state patronage of NCAs and mutual cooperation between NCAs and public authorities are still too scarce to bring Russia any closer to a new form of federalism.

However, despite the differences between the actual structure of NCAs in Russia, the reason why the problem of *ensuring that any minorities that have to be represented and only the ones that do get the representation they require* is so pronounced has to do not with Russia-specific political structure, but with the general fact that in most of the states the number of minorities is very high as well as the absence of theoretically elegant approaches of dealing with such high numbers.

5.3. *Consociationalism: a solution?* We have to admit that even in consociational democracy (in this paper, we decided to touch upon consociationalism because we see it as a model of non-territorial federal democracy in which NCAs could exist rather than an alternative to the NCA model), let alone liberal democracy, minorities are not likely to achieve the level of representation they would prefer, although in consociational democracy, where each community expects to be represented (O'Leary, 2008) minority groups get the recognition they strive for. In terms of recognition, integrating minorities within the general electoral system is indeed very helpful, but all that both guarantee is that minorities have a voice, not that they have a say.<sup>25</sup>

Proportional representation, as, in truth, the whole idea of consociationalism, makes sense only in those cases when there are not too many minorities (because to reach a consensus on every decision when there are too many political actors (i.e. a significant number of ethnic and other minorities with different opinions is extremely difficult) and when these minorities are rather large (in reality, one vote against one hundred does not and could not count, whereas 40 votes against 60 could: two large parties will have to come to a mutually agreeable solution in order to avoid the possibility of outbreaks and to maintain stability). Therefore, the only real way small ethnic communities, even when they are represented in law-making bodies, can affect the decision-making process is by vetoing the decision, thus bogging down the legislative process altogether.

In this connection, the way the Treaty of Lisbon was adopted proves to be very illustrative, showing how a country used its veto power and voted against the Treaty that was supposed to replace unanimous decisions with a qualified majority voting, basically depriving the countries of their veto power, and was made to re-vote and get it right. What is most remarkable is that the authors of the Treaty of Lisbon were hoping to change the way of consociational decision-making of the EU in response to the continuing enlargement of the organisation precisely to avoid such situations; it was certainly not their intention to trigger them.<sup>26</sup> The problems it had to face during the process of adoption, the Treaty of Lisbon shows us that the shift to qualified majority voting due to the rising number of members can be justified.

Returning to our subject of minorities, when the overall number of minorities is not too high and only one of them is opposed to the decision, then the parties may decide to enter into cooperation and find a solution they all accept, in other words,

<sup>25</sup> On representation in consociational democracy see B O'Leary, 'The logics of power-sharing, consociation and pluralist federations', in M Weller & B Metzger (eds), *Settling self-determination disputes: complex power-sharing in theory and practice*, Martinus Nijhoff Publishers, Leiden, 2008, pp. 61-124; recognition of minorities via electoral system is discussed in Y Ghai, 'Constitutional asymmetries: communal representation, federalism, and cultural autonomy' in A Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, Oxford University Press, New York, 2002, pp. 141-171.

<sup>26</sup> For other examples of difficulties connected with consociational democracies see I Peleg, *Democratizing the Hegemonic State: Political Transformation in the Age of Identity*, Cambridge University Press, Cambridge, 2007, p.45.



do exactly what, we believe, Lijphart supposed they should do in his consociational model, where veto power is one of the key characteristics.<sup>27</sup>

Unfortunately, there is a whole lot of truly multinational states where there are too many minorities and they are so numerically different, from small indigenous minorities to minorities with, for instance, second largest population in the state, that to incorporate all of them into the governmental apparatus either through guaranteed representation or proportional representation is likely to make it inexcusably cumbersome.

Nevertheless, the principle used in Russia's Federation Council, where each federal subject of Russia is represented by two officials regardless of the subject's size could be adapted as a variant of guaranteed non-territorial representation for multi-ethnic societies too, although the ongoing process of subject enlargement resulting in the reduction of the number of federal subjects should be taken into account as an indication that the number of groups that can be represented effectively is limited. Another problem connected with guaranteed representation is that there are not only ethnic minorities that seek to be represented and sooner or later other minorities (for instance, sexual, gender or age minorities) may claim their right to representation too.

However, consociationalism can still be applicable in some situations, moreover, it is a very interesting and promising model of democracy with some favourable features, but as ethnic minorities are present almost in every state, many of which are neither territorial nor non-territorial federal democracies, and some of them are not even democracies at all, we would like to continue our search hoping to find a solution more universal.

*5.4. Ethnic parties: a solution?* It is rather remarkable that while political theorists are busy trying to elaborate a system of minority representation there already exists an empirically tested, time-honoured and widely applied mode of group representation that allows different groups to articulate both their social and their political interests, which is party representation. The advantage of political parties as a mode of representation is that they help to achieve the necessary degree of interaction between the government and the citizens, something that the Russian model of non-territorial minority representation through NCAs tries to achieve, but has so far been unsuccessful. However, in the case of the Russian Federation, party representation is not an alternative to the NCAs model because of the restriction imposed by the Federal Law on Political Parties: in Russia, it is prohibited to found political parties on the basis of ethnicity. Somehow, having ethnic political parties in parliament has often been associated with an increased danger of ethnic discrimination and subsequent ethnic-based clashes.<sup>28</sup>

<sup>27</sup> Lijphart's model is presented in A Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, Yale University Press, New Haven, 1977.

<sup>28</sup> Rustow, for example, calls an inclusion of ethnic communities in political system an institutionalisation of differences, see D Rustow, 'Transitions to democracy: toward a dynamic model', *Comparative Politics*, vol. 2, no. 3, 1970, pp. 337-363.

Still, although in some countries it is discouraged or even prohibited for political parties to be based on the principle of ethnic identity, in other countries ethnic parties exist without inciting ethnic hatred. Nevertheless, studying the phenomenon of ethnic party representation, political scientists tend to focus on such topics as electoral performance of such parties and their role in the process of democratisation and sustaining democracy, rather than on the capabilities of ethnic party representation in the field of conflict resolution.<sup>29</sup> Although we do recognise ethnic party representation as a means of conflict resolution, our primary concern is that if an ethnic party wins majority in parliament, it may prove not to be able to effectively deal with non-ethnic issues, such as economics, foreign policy and so on.

## 6. Conclusion

The inconsistencies in the theory of non-territorial autonomies, revealed by an examination of an attempt made in the Russian Federation to put theory into practice are disappointing, because they clearly show that since Bauer and Renner, no significant advances have been made on the theory (see Table 1).

For almost a century political theorists have been trying to clear away all the inconsistencies and make the theory more practice-oriented, with deplorable results: the inconsistencies are still there and a truly wide application (if we consider non-territorial autonomies as a means of minority representation and a chance to exercise the right for self-determination, then it has to be wide) of non-territorial autonomies is still inconceivable.

Moreover, capabilities of non-territorial autonomies as tools of conflict prevention are rather limited, because they cannot prevent from taking place two important factors that alone are able to spark off and fuel ethnic conflicts - inter-ethnic hostilities and separatism. However, cultural diversity itself is never a source of conflict, there are always additional factors that contribute to the increase of ethnic tensions, and underrepresentation is one of them. Since we argue that the models of NCAs are still not developed enough to be implemented successfully,

we have to propose other mechanisms. Indeed, while political theorists work hard to develop such ideas as non-territorial federalism and consociationalism, we advise political practitioners to concentrate on giving new opportunities to the mechanisms that already exist and building up those that do not, but should do: (i) global institution to promote, protect and monitor minority and human rights,

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<sup>29</sup> Electoral performance of ethnic parties has been researched in amongst others S Alonso, 'Enduring ethnicity: the political survival of incumbent ethnic parties in western democracies' in JM Maravall & I Sánchez-Cuenca (eds), *Controlling Governments. Voters, Institutions and Accountability*, Cambridge University Press, Cambridge, 2007, pp. 82-104; ethnic parties and democratisation in subject to research in K Chandra, 'Ethnic Parties and Democratic Stability', *Perspectives on Politics*, vol. 3, no. 2, 2005, pp. 235-253. The literature on ethnic party representation and conflict resolution is scarce, but not non-existent; see, for example, S Alonso & R Ruiz-Rufino, 'Political Representation and Ethnic Conflict in New Democracies', *European Journal of Political Research*, vol. 46, no. 2, 2007, pp. 237-267.

possibly with the mechanism of enforcement<sup>30</sup>(ii) independent international court minority groups themselves can bring a case before (iii) territorial autonomy, proportional representation or guaranteed representation where it is possible and appropriate (iiii) the possibility for minority groups to organise, in the framework of civil society, free associations, not affiliated with any government entity (iiiii) adequate ethnic integration policy followed by the state and aimed not at assimilation, but at promoting constructive relations between ethnic communities, advancing intercultural dialogue and trying to minimise cultural and religious misunderstandings.

Some of these, like proportional representation, are optional and cannot be used in every state and in every society, but others, like human rights protection, are essential and universal. As for the right for self-determination and minorities need for two Rs - recognition and representation, if a certain right is granted, then there has to be an opportunity of exercising this right; and non-territorial autonomies can still be potentially helpful in providing ethnic groups with such an opportunity. Since including non-territorial autonomies in the state structure is generally complicated and fraught with unexpected consequences, we suggest a model where non-territorial autonomies are, in fact, simply a network of non-territorially bound non-governmental organisations and thus do not require any additional legislation. According to this model, there should be a global union of non-governmental organisations that represent ethnic groups, where each organisation for each ethnic group (i.e. a non-territorial autonomy) is, in its turn, too a global representative of the ethnic group and could consist of smaller non-governmental organisations, for example, regional NTAs.

The advantages of such a model are accessibility, equality, and also globality, which is an important feature for diasporas, in other words, ethnic groups which already used their right for self-determination to create a nation-state of their own, but do not have any special status when they are outside the state. At the same time, they have a nation-state at their back, which is a political actor in the international arena and can stand up for them in case they are being oppressed. The only political actor who can stand up for indigenous minorities is the state they live in, but most of the time it is the state they live in which is the oppressor. In the suggested model, ethnic groups by means of their non-territorial autonomies are themselves actors in the global arena and can stand up for themselves; this way their aspirations for recognition and representation can become fulfilled.

However, most of ethnic conflicts are not the result of minority aspirations not being fulfilled, they are the result of discrimination against minorities, violations against basic human rights, deprivation of basic human needs. Total elimination of all these deep problems that tear up multi-ethnic societies to separate warring ethnic groups is the first step that should be taken by political practitioners while political theorists are working out the next step. What political theorists, in their

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<sup>30</sup> For further discussion on globalising minority rights see Roach, pp. 135-146.

turn, should remember while devising their theories is that contemporary political science is not a place for Utopia; the theories have to be at least to some extent practice-oriented, as it is the real world they will be implemented in and real people to be experimented on. Only together, interacting and cooperating, scholars and practitioners will be able to succeed in their common objective of steering the nations towards a global peace culture.

Table 1. Summary of findings

	Theory	Practice
<b>Form</b>	*group membership *group rights	- legal inconsistencies - some members of ethnic communities are left behind
<b>Substance</b>	*definition of minority	- territorial ties - some majorities recognised as minorities - some minorities not recognised
<b>Structure</b>	*representation and participation	- multiple NCAs representing one group - flawed hierarchy: i) regional NCAs do not represent all the local NCAs; ii) federal NCAs do not represent all the regional NCAs

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